

**LAW OFFICES OF RONALD A. MARRON**

RONALD A. MARRON (SBN 175650)

*ron@consumersadvocates.com*

ALEXIS WOOD (SBN 270200)

*alexis@consumersadvocates.com*

KAS GALLUCCI (SBN 288709)

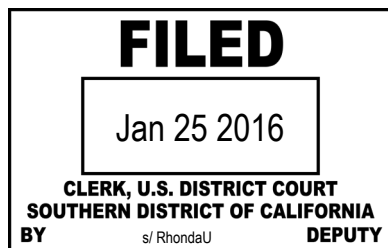
*kas@consumersadvocates.com*

651 Arroyo Drive

San Diego, California 92103

Telephone: (619) 696-9006

Facsimile: (619) 564-6665



*Attorneys for Plaintiff and the Proposed Class*

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA**

BELINDA GUTIERREZ-RODRIGUEZ,  
on behalf of herself, and all others  
similarly situated,

Plaintiff,

v.

R.M. GALICIA, INC. dba  
PROGRESSIVE MANAGEMENT  
SYSTEMS,

Defendant.

Case No.: '16CV0182 H BLM

CLASS ACTION

**COMPLAINT FOR DAMAGES  
AND INJUNCTIVE RELIEF  
PURSUANT TO THE  
TELEPHONE CONSUMER  
PROTECTION ACT, 47 U.S.C. §§  
227 et seq.**

DEMAND FOR JURY TRIAL

**INTRODUCTION**

1  
2 1. Belinda Gutierrez-Rodriguez (“Plaintiff”) brings this Class Action  
3 Complaint for damages, injunctive relief, and any other available legal or equitable  
4 remedies, resulting from the illegal actions of R.M. Galicia, Inc. dba Progressive  
5 Management Systems (“Defendant” or “PMS”), in negligently, and/or willfully  
6 contacting Plaintiff through telephone calls on Plaintiff’s cellular telephone, in  
7 violation of the Telephone Consumer Protection Act, 47 U.S.C. §§ 227 *et seq.*,  
8 (“TCPA”), thereby invading Plaintiff’s privacy. Plaintiff alleges as follows upon  
9 personal knowledge as to her own acts and experiences, and, as to all other matters,  
10 upon information and belief, including investigation conducted by her attorneys.

**NATURE OF THE ACTION**

11  
12 2. PMS is a debt collector offering both first party and third party debt  
13 collection services primarily to the healthcare industry.

14 3. In an attempt to collect on alleged debts owed, PMS routinely contacts  
15 alleged debtors through telephone calls with automatic telephone dialing equipment.  
16 However, when PMS is unable to reach the alleged debtors by a telephone number  
17 provided by the debtor, PMS results to locating new numbers on its own through  
18 unreliable skip tracing methods– a number that it necessarily lack express consent  
19 to call. Unfortunately, as a result of this business practice, PMS regularly makes  
20 calls to cellular telephone numbers, without consent, in violation of the TCPA.  
21 Additionally, after being warned of an incorrect intended recipient of the call, PMS  
22 continues to make calls to wrong numbers.

23 4. The TCPA strictly forbids nuisance calls exactly like those alleged in  
24 this Complaint – intrusive phone calls to private cellular phones, places to numbers  
25 obtained without the prior express consent of the call recipients.

26 5. PMS’s violations caused Plaintiff and members of the Class actual  
27 harm, including aggravation, nuisance, and invasion of privacy that necessarily  
28

1 accompanies the receipt of unsolicited phone calls, as well as the violation of their  
2 statutory rights.

3 6. Plaintiff seeks an injunction stopping PMS from sending unsolicited  
4 phone calls, as well as an award of statutory damages under the TCPA, together with  
5 costs and reasonable attorneys' fees.

### 6 JURISDICTION AND VENUE

7 7. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff  
8 seeks up to \$1,500 in damages for each call in violation of the TCPA, which, when  
9 aggregated among a proposed class number in the tens of thousands, exceeds the  
10 \$5,000,000 threshold for federal court jurisdiction. Further, Plaintiff alleges a  
11 national class, which will result in at least one class member belonging to a different  
12 state than that of the Defendant, providing jurisdiction under 28 U.S.C. §  
13 1332(d)(2)(A). Therefore, both elements of diversity jurisdiction under the Class  
14 Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.

15 8. This Court has federal question subject matter jurisdiction under 28  
16 U.S.C. § 1331, as the action arises under the TCPA, a federal statute.

17 9. Venue is proper in the United States District Court for the Southern  
18 District of California pursuant to 28 U.S.C. §§ 1391(b) because Defendant, at all  
19 times herein mentioned, was doing business in the County of San Diego, State of  
20 California, and a substantial part of the events giving rise to the claim occurred in  
21 this jurisdiction.

### 22 PARTIES

23 10. Plaintiff Belinda Gutierrez-Rodriguez is, and at all times mentioned  
24 herein was, a resident of the State of California, County of San Diego. She is, and  
25 at all times mentioned herein was a "person" as defined by 47 U.S.C. § 153 (32).

26 11. Defendant PMS is a debt collector that maintains its corporate office at  
27 1521 West Cameron Ave., First Floor, West Covina, California 91790. Defendant  
28 also maintains operations in Nevada at 6275 McLeod Drive, Suite 3, Las Vegas,

1 Nevada 89120. PMS is registered to do business in California as entity number  
2 C1216320, and is a “person” as defined by 47 U.S.C. § 153 (32).

3 12. Plaintiff alleges that at all times relevant herein PMS conducted  
4 business in the state of California and in the County of Alameda, and within this  
5 judicial district.

6 **THE TELEPHONE CONSUMER PROTECTION ACT OF 1991**  
7 **(TCPA), 47 U.S.C. §§ 227 *et seq.***

8 13. In 1991, Congress enacted the Telephone Consumer Protection Act, 47  
9 U.S.C. § 227 (TCPA),<sup>1</sup> in response to a growing number of consumer complaints  
10 regarding certain telemarketing practices.

11 14. The TCPA regulates, among other things, the use of automated  
12 telephone equipment, or “autodialers.” Specifically, the plain language of section  
13 227(b)(1)(A)(iii) prohibits the use of autodialers to make any call to a wireless  
14 number in the absence of an emergency or the prior express consent of the called  
15 party.<sup>2</sup>

16 15. According to findings by the Federal Communication Commission  
17 (“FCC”), the agency Congress vested with authority to issue regulations  
18 implementing the TCPA, such calls are prohibited because, as Congress found,  
19 automated or prerecorded telephone calls are a greater nuisance and invasion of  
20 privacy than live solicitation calls, and such calls can be costly and inconvenient.  
21 The FCC also recognized that wireless customers are charged for incoming calls  
22 whether they pay in advance or after the minutes are used.<sup>3</sup>

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24 <sup>1</sup> Telephone Consumer Protection Act of 1991, Pub. L. No. 102-243, 105 Stat. 2394  
25 (1991), codified at 47 U.S.C. § 227 (TCPA). The TCPA amended Title II of the  
26 Communications Act of 1934, 47 U.S.C. §§ 201 *et seq.*

26 <sup>2</sup> 47 U.S.C. § 227(b)(1)(A)(iii).

27 <sup>3</sup> *Rules and Regulations Implementing the Telephone Consumer Protection Act of*  
28 *1991*, CG Docket No. 02-278, Report and Order, 18 FCC Rcd 14014 (2003).



1 [Female prerecorded/artificial voice] “This is a message for ‘David  
2 Rodriguez Jr.’ If we have reached the wrong number for this person  
3 please call us back at 866-767-1043 to remove your phone number.  
4 If you are not ‘David Rodriguez Jr.’ please hang up. If you are ‘David  
5 Rodriguez Jr.’ please continue to listen to this message. ‘David  
6 Rodriguez Jr.’ you should not listen to this message so other people  
7 can hear it as it contains personal and private information. This is  
8 Patricia from Progressive Management Systems. This is an attempt  
9 to collect a debt by a debt collector. Any information obtained will  
10 be used for that purpose. Please contact me about an important  
11 business matter at 866-767-2296.”

12 Or,

13 [Male prerecorded/artificial voice] “This is a message for ‘David  
14 Rodriguez Jr.’ If we have reached the wrong number for this person  
15 please call us back at 866-767-1043 to remove your phone number.  
16 If you are not ‘David Rodriguez Jr.’ please hang up. If you are ‘David  
17 Rodriguez Jr.’ please continue to listen to this message. ‘David  
18 Rodriguez Jr.’ you should not listen to this message so other people  
19 can hear it as it contains personal and private information. This is  
20 Mark from Progressive Management Systems. This is an attempt to  
21 collect a debt by a debt collector. Any information obtained will be  
22 used for that purpose. Please contact me about an important business  
23 matter at 866-767-2296.”

24 Or,

25 [Female prerecorded/artificial voice] “Please call us back at 866-767-  
26 2296 to remove your number. If you are not ‘Rodriguez J. R. David  
27 Filemon’ please hang up. If you are ‘Rodriguez J.R. David Filemon’  
28 please continue to listen to this message. ‘Rodriguez J. R. David

1 Filemon' you should not listen to this message so that other people  
 2 can hear it as it contains personal and private information. This is  
 3 Patricia from Progressive Management Systems. This is an attempt  
 4 to collect a debt by a debt collector. Any information obtained will  
 5 be used for that purpose. Please contact me about an important  
 6 business matter at 866-767-2296. Thank you. Goodbye."

7 Or,

8 [Female prerecorded/artificial voice] "This is a message for 'David  
 9 Rodriguez Jr.' If we have reached the wrong number for this person  
 10 866-767-2296 please call us back at to remove your phone number.  
 11 If you are not 'David Rodriguez Jr.' please hang up. If you are 'David  
 12 Rodriguez Jr.' please continue to listen to this message. 'David  
 13 Rodriguez Jr.' you should not listen to this message so other people  
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 15 Patricia from Progressive Management Systems. This is an attempt  
 16 to collect a debt by a debt collector. Any information obtained will  
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 18 business matter at 866-767-2296."

19 Or,

20 [Female prerecorded/artificial voice] "This is a message for  
 21 'Rodriguez J.R. David Filemon' If we have reached the wrong  
 22 number for this person please call us back at 866-767-2296 to remove  
 23 your number. If you are not 'Rodriguez J.R. David Filemon' please  
 24 hang up. If you are 'Rodriguez J.R. David Filemon' please continue  
 25 to listen to this message. 'Rodriguez J.R. David Filemon' you should  
 26 not listen to this message so that other people can hear it as it contains  
 27 personal and private information. This is Patricia from Progressive  
 28 Management Systems. This is an attempt to collect a debt by a debt



1 collector. Any information obtained will be used for that purpose.  
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 11 this message so that other people can hear it as it contains personal  
 12 and private information. This is Mark from Progressive Management  
 13 Systems. This is an attempt to collect a debt by a debt collector. Any  
 14 information obtained will be used for that purpose. Please contact me  
 15 about an important business matter at 866-767-2296. Thank you.  
 16 Goodbye.”

17 23. These unsolicited phone calls placed to Plaintiff’s wireless telephone  
 18 were placed via an “automatic telephone dialing system,” (“ATDS”) as defined by  
 19 47 U.S.C. § 227 (a)(1) and by using “an artificial or prerecorded voice” system as  
 20 prohibited by 47 U.S.C. § 227 (b)(1)(A), which had the capacity to produce or store  
 21 numbers randomly or sequentially, and to dial such numbers, to place telephone calls  
 22 to Plaintiff’s cellular telephone.

23 24. The telephone number that Defendant, or its agents, called was assigned  
 24 to a cellular telephone service for which Plaintiff incurred a charge for incoming  
 25 calls pursuant to 47 U.S.C. § 227 (b)(1).

26 25. These telephone calls constitute calls that were not for emergency  
 27 purposes as defined by 47 U.S.C. § 227(b)(1)(A)(i).  
 28





1        33.        This suit seeks only damages and injunctive relief for recovery of  
2 economic injury on behalf of the Class and it expressly is not intended to request  
3 any recovery for personal injury and claims related thereto. Plaintiff reserves the  
4 right to expand the Class definition to seek recovery on behalf of additional persons  
5 as warranted as facts are learned in further investigation and discovery.

6        34.        The joinder of the Class members is impractical and the disposition of  
7 their claims in the Class action will provide substantial benefits both to the parties  
8 and to the Court. The Class can be identified through Defendant's records or  
9 Defendant's agents' records.

10       35.        There is a well-defined community of interest in the questions of law  
11 and fact involved affecting the parties to be represented. The questions of law and  
12 fact to the Class predominate over questions which may affect individual Class  
13 members, including the following:

- 14           a. Whether, within four years prior to the filing of this Complaint  
15           through the present, Defendant or its agents placed telephone calls  
16           without the recipients' prior express consent (other than a telephone  
17           call made for emergency purposes or made with the prior express  
18           consent of the called party) to a Class member using any automatic  
19           telephone dialing system or an artificial or pre-recorded voice system,  
20           to any telephone number assigned to a cellular telephone service;
- 21           b. Whether the equipment Defendant, or its agents, used to make the  
22           telephone calls in question was an automatic telephone dialing system  
23           as contemplated by the TCPA;
- 24           c. Whether Defendant, or its agents, systematically made telephone calls  
25           to persons featuring an artificial or pre-recorded voice;
- 26           d. Whether Defendant, or its agents, systematically made telephone calls  
27           to persons who did not previously provide Defendant with their prior  
28           express consent to receive such telephone calls;

- 1 e. Whether Plaintiff and the Class members were damaged thereby, and  
2 the extent of damages for such violation; and  
3 f. Whether Defendant and its agents should be enjoined from engaging  
4 in such conduct in the future.

5 36. As a person that received at least one unsolicited telephone call to her  
6 cell phone without Plaintiff's prior express consent, Plaintiff is asserting claims that  
7 are typical of the Class. Plaintiff will fairly and adequately represent and protect the  
8 interests of the Class in that Plaintiff has no interest antagonistic to any member of  
9 the Class.

10 37. Plaintiff and the members of the Class have all suffered irreparable  
11 harm as a result of the Defendant's unlawful and wrongful conduct. Absent a class  
12 action, the Class will continue to face the potential for irreparable harm. In addition,  
13 these violations of law will be allowed to proceed without remedy and Defendant  
14 will likely continue such illegal conduct. Because of the size of the individual Class  
15 member's claims, few, if any, Class members could afford to individually seek legal  
16 redress for the wrongs complained of herein.

17 38. Plaintiff has retained counsel experienced in handling class action  
18 claims and claims involving violations of the Telephone Consumer Protection Act.

19 39. A class action is a superior method for the fair and efficient adjudication  
20 of this controversy. Class-wide damages are essential to induce Defendant to  
21 comply with federal law. The interest of Class members in individually controlling  
22 the prosecution of separate claims against Defendant is small because the maximum  
23 statutory damages in an individual action for violation of privacy are minimal.  
24 Management of these claims is likely to present significantly fewer difficulties than  
25 those presented in many class claims.

26 40. This class action is appropriate for certification because Defendant has  
27 acted or refused to act on grounds generally applicable to the Class as a whole,  
28 thereby requiring the Court's imposition of uniform relief to ensure compatible

standards of conduct toward the Class members and making final injunctive relief appropriate with respect to the Class as a whole. Defendant's practices challenged herein apply to and affect each of the Class members uniformly. Plaintiff's challenge to those practices hinges on Defendant's conduct with respect to the Class as whole, not on facts or law applicable only to Plaintiff.

# **FIRST CAUSE OF ACTION**

## **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

### **47 U.S.C. §§ 227 *ET SEQ.***

41. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

42. Each such telephone call was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to effectively make thousands of phone calls simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention.

43. Defendant also made telephone calls featuring a prerecorded or artificial voice without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

44. The foregoing acts and omissions of Defendant and its agents constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 *et seq.*

45. As a result of Defendant's, and Defendant's agents', negligent violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

46. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**SECOND CAUSE OF ACTION**  
**KNOWING AND/OR WILLFUL VIOLATIONS OF THE**  
**TELEPHONE CONSUMER PROTECTION ACT**  
**47 U.S.C. §§ 227 *ET SEQ.***

47. Plaintiff incorporates by reference the above paragraphs 1 through 40 inclusive, of this Complaint as though fully stated herein.

48. Each such telephone call was made using equipment that, upon information and belief, had the capacity to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. By using such equipment, Defendant was able to effectively make thousands of phone calls simultaneously to lists of thousands of wireless phone numbers of consumers without human intervention.

49. Defendant also made telephone calls featuring a prerecorded or artificial voice without the prior express consent of the Plaintiff and other members of the Class to receive such telephone calls.

50. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. §§ 227 *et seq.*

51. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 *et seq.*, Plaintiff and the Class are entitled to treble damages, as provided by statute, up to \$1,500.00, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

52. Plaintiff and the Class are also entitled to and seek injunctive relief prohibiting such conduct in the future.

**PRAYER FOR RELIEF**

**Wherefore**, Plaintiff respectfully requests the Court to grant Plaintiff and the Class members the following relief against Defendant:

**FIRST CAUSE OF ACTION FOR NEGLIGENT VIOLATION OF  
THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

53. As a result of Defendant's, and Defendant's agents', negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

54. Pursuant to 47 U.S.C. § 227(b)(3)(A), Plaintiff seeks injunctive relief prohibiting such conduct in the future.

55. Any other relief the Court may deem just and proper.

**SECOND CAUSE OF ACTION FOR KNOWING AND/OR WILLFUL  
VIOLATION OF THE TCPA, 47 U.S.C. §§ 227 *ET SEQ.***

56. As a result of Defendant's, and Defendant's agents', willful and/or knowing violations of 47 U.S.C. § 227(b)(1), Plaintiff seeks for herself and each Class member treble damages, as provided by statute, up to \$1,500.00 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

57. Pursuant to 47 U.S.C. § 227(b)(3)(A), injunctive relief prohibiting such conduct in the future.

58. Any other relief the Court may deem just and proper.

**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: January 25, 2016

s/ Ronald A. Marron

By: Ronald A. Marron

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MARRON**

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ALEXIS WOOD

KAS GALLUCCI

651 Arroyo Drive

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Telephone: (619) 696-9006

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